

11 SEPTEMBER 1947

I N D E X
of
EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
2487	3162		Handwritten Statement given Elton M. Hyder on 11 February 1946 by ARAKI, Sadao		28244
			<u>MORNING RECESS</u>		28250
	3163		Book entitled "A Diplomatic History of the Shanghai Incident (printed in Japanese)	28257	
1899-D	3163-A		Excerpt therefrom		28257
1899-A	3163-B		Statement of Army Com- mander SHIRAKAWA dated 1 March 1932 (p.91 .. "A Diplomatic History of the Shanghai Incident)		28271
			<u>NOON RECESS</u>		28271

11 SEPTEMBER 1947

I N D E X
Of
WITNESSES

<u>Defense' Witnesses</u>	<u>Page</u>
ARAKI, Sadao (resumed)	28221
Direct (cont'd) by Mr. McManus	28221
Direct (cont'd) by Mr. McManus	28270
Direct by Mr. Blakeney	28276
Question by Mr. Warren	28284
Cross by Mr. Comyns Carr	28286
<u>AFTERNOON RECESS</u>	28295
Cross (cont'd) by Mr. Comyns Carr	28296

1 Thursday, 11 September 1947

2 - - -

3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 - - -

12 Appearances:

13 For the Tribunal, all Members sitting, with
14 the exception of: HONORABLE JUSTICE R. B. PAL, Member
15 from India, not sitting from 0930 to 1600.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -

19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFF.)
22
23
24
25

K
n
a
p
&
Y
e
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 - - -

4 S A D A O A R A K I, an accused, called as a
5 witness on his own behalf, resumed the stand
6 and testified through Japanese interpreters as
7 follows:

8 THE PRESIDENT: Mr. McManus.

9 MR. McMANUS: If the Tribunal pleases, as was
10 suggested in Chambers this morning, may I request that
11 the motion to be argued this morning be postponed until
12 the conclusion of the accused ARAKI's direct testimony?

13 THE PRESIDENT: I do not think there is any
14 objection to that, Mr. McManus.

15 MR. McMANUS: I shall proceed then, your Honor.

16 (Reading): "28. My refutation against
17 prosecution testimony.

18 "Prosecution's record of my interrogation and its
19 intrinsic value.

20 "1. The prosecution tendered exhibit No. 187-A
21 onward as being the record of my interrogation. I pre-
22 sume the prosecution meant by this to submit to the
23 Tribunal the record of the interrogation which the
24 prosecutors (Colonel Morrow and Mr. Hyder) conducted of
25 me at the Sugamo Prison. The interrogation was carried

1 on for more than twenty times, between January 18th
2 and March 12, 1946, by the prosecutors, assisted by
3 one or two interpreters each time.

4 "The English versions of the said interroga-
5 tions were stenographically recorded for the first
6 few occasions, but this procedure was stopped later,
7 whereas the Japanese version was not recorded from
8 the beginning. The interpreters were not fully con-
9 versant with Japanese and there were several points
10 over which, on account of incompetent interpretation,
11 we failed to come to a mutual understanding. More-
12 over, the record of this interrogation was not read
13 to me, nor was it even shown to me.

14 "I was never asked to give oath or sign the
15 statement in connection with this interrogation.
16 The record, when presented before the Tribunal, con-
17 tained quite a number of misunderstandings, complica-
18 tions and mistakes; more remarkable were its diversions
19 from the facts, and as a whole, I cannot hold myself
20 responsible for the contents of these statements.

21 "2. Through the whole course of interrogation,
22 the prosecution changed interpreters almost on each oc-
23 casion, and as far as I could see, all of them were
24 unable to thoroughly understand Japanese and the Japan-
25 ese state of affairs. The interpreters themselves

1 seemed to have conscientiously admitted their incom-
2 petence.

3 "As I felt uneasy of this situation, I sug-
4 gested that I should write the outline, if not the
5 details, of what were asked of me. I said that if
6 the prosecutors were to make interrogations based on
7 my written statement, it would not only save consider-
8 able time, but also would help to convey my idea
9 accurately and correctly.

10 "This suggestion was duly agreed to by the
11 prosecution and although I had not much time to elabor-
12 ate on its contents, I made a statement concerning the
13 settlement of the Manchurian Incident after my accept-
14 ance of the post of War Minister, and also, in answer
15 to the question of the prosecution regarding the move-
16 ment of young officers, I made another statement con-
17 cerning the situation of Japan at the time of the
18 Incident and the general outline of how I acted in it.
19 The former was handed over to Mr. Hyder and the latter
20 to Colonel Morrow, and I asked them to let me read the
21 English translation of those two statements when it was
22 ready.

23
24 "I think this took place on or about 11th or
25 12th of February 1946. There is a remark in exhibit
No. 187-C, as having been said by the prosecutor, 'I

1 will bring you a copy of this translation,' and also
2 as my statement, 'All of these are written in the
3 document that I gave you,' refer to this conversation.

4 "However, much to my anxiety, the translation
5 was not shown to me, and the interrogation of the
6 prosecutors continued. Of course, the interrogation,
7 which was carried out in the same manner as before,
8 filled me with apprehension, but since I had already
9 presented my written statement, it did not worry me
10 too much. I only waited for the time when a proper
11 interrogation based on my written statement would take
12 place.

13 "After the commencement of this trial, the
14 translation of the documents in question was handed
15 to me through my defense counsel, and the prosecution
16 submitted to the Tribunal the record of my interroga-
17 tion in evidence. On that occasion, my counsel tried
18 to explain to the Tribunal the circumstances in which
19 the interrogation was carried out, but my impression
20 was that the explanation was not properly understood.

21 "My counsel subsequently tried to take every
22 opportunity to explain this matter to the Tribunal. He
23 once tendered a copy of this translation in evidence
24 under a general phase, but it was not admitted on the
25 ground that it should be submitted under the individual

1 will bring you a copy of this translation,' and also
2 as my statement, 'All of these are written in the
3 document that I gave you,' refer to this conversation.

4 "However, much to my anxiety, the translation
5 was not shown to me, and the interrogation of the
6 prosecutors continued. Of course, the interrogation,
7 which was carried out in the same manner as before,
8 filled me with apprehension, but since I had already
9 presented my written statement, it did not worry me
10 too much. I only waited for the time when a proper
11 interrogation based on my written statement would take
12 place.

13 "After the commencement of this trial, the
14 translation of the documents in question was handed
15 to me through my defense counsel, and the prosecution
16 submitted to the Tribunal the record of my interroga-
17 tion in evidence. On that occasion, my counsel tried
18 to explain to the Tribunal the circumstances in which
19 the interrogation was carried out, but my impression
20 was that the explanation was not properly understood.

21 "My counsel subsequently tried to take every
22 opportunity to explain this matter to the Tribunal. He
23 once tendered a copy of this translation in evidence
24 under a general phase, but it was not admitted on the
25 ground that it should be submitted under the individual

1 phase.

2 "I contend that the written statement that I
3 made at the Sugamo Prison is indispensable to the
4 record of my interrogation and that they should be
5 read together. I further suggest that even in that
6 written statement, there is a slight mistake which
7 occurred through misinterpretation of prosecutor's
8 question.

9 "3. Such being the case, the record of my
10 interrogation contained several important mistakes
11 and, furthermore, the contents are not consistent as
12 a Japanese sentence, some of which, I shall point out
13 in the following:

14 "1. The allegation that during the Manchurian
15 Incident, I established a plan for occupation of Man-
16 churia. (Exhibit No. 188-A, 188-B, 188-C, among which
17 188-C is slightly better, but the other two do not
18 make sense.)

19 "This allegation is entirely different from
20 the fact. That this allegation is wrong can easily be
21 checked by comparing the date of my interrogation, my
22 written answer to the prosecutors and Exhibit No. 188-A,
23 188-B and 188-C.

24 "The real state of affairs at that time has
25 been fully explained in my present statement, and the

1 statement will be supported by the evidence which has
2 been submitted by this time and also by those which
3 will be submitted in the future.

4 "2. The allegation makes us believe as if
5 the Privy Council was the party which decided the
6 national policy. That this is wrong is quite clear
7 even from common sense.

8 "3. It is also a great mistake, as can easily
9 be ascertained, in the allegation that the War Minister
10 dictated orders to the Chief of General Staff for the
11 dispatch of troops.

12 "4. The date when the INUKAI cabinet
13 decided the outline of its Manchurian policy was not
14 the 17th of December. This mistake arose when the
15 prosecutor insisted that the plenary session of the
16 Privy Council for the deliberation of 'Issuance of
17 Bond to cover the Emergency Expense to deal with the
18 Manchurian Incident' was on that date.

19 "5. My statement concerning the basic
20 principle of dealing with the Incident was confused
21 by the interpreter with my statement concerning the
22 fact. By this I mean our conversation relative to
23 whether or not the document in question is still kept,
24 regulation of cabinet meeting, whether or not attend-
25 ance at the cabinet meeting was compulsory.

1 "6. The allegation is that I stated that
2 the sovereignty over Manchuria rests with China. It
3 may be so from general conception based on a map, but
4 the fact was different, and my statement to that effect
5 was mistaken as above shown.

6 "7. The allegation that I directed the
7 independence declaration of Manchuria and its sub-
8 sequent recognition is entirely mistaken. This will
9 be clarified by the allusion to the same in this state-
10 ment as well as by other evidence which is to be ten-
11 dered.

12 "8. Conversations concerning the responsibil-
13 ity of cabinet members, the declaration of the Foreign
14 Minister, those who were responsible for the China
15 Incident, and the circumstances in which I accepted
16 the post of Cabinet Councillor were only partially
17 recorded, and because of this, the record failed to
18 convey the real meaning and is apt to mislead the
19 readers. This will be clarified by documentary evidence
20 and witnesses.

21 "9. The extent of authority of the Supreme
22 Command, which was in charge of the expedition, and
23 that of the government was not thoroughly expressed in
24 the record of my interrogation.
25

"I merely stated an instance to show that in

1 ordinary times, the government policy is shown to
2 the Supreme Command by the government in order to
3 make it a basis for the former to decide upon its
4 movement, but by this I did not mean to specifically
5 state the fundamental power and authority of those
6 two organs.

7 "When the warfare was started, or when the
8 Supreme Command deemed it necessary from national
9 defense point of view, it was entitled to make a
10 direct access to the Throne, and so it cannot be said
11 that the dispatch of troops was done only when it was
12 agreed to by the government.

13
14
15
16
17
18
19
20
21
22
23
24
25

1 "2. Further refutation to other evidence
2 of the prosecution.

3 "a. The Motion Picture 'Emergency Japan.'

4 "'Emergency Japan' was the title of my speech
5 which I made, in compliance with the request of the
6 Osaka Mainichi Newspaper, on the subject of Emergency.

7 "It was the time when Japan was unfortunate
8 to have to withdraw from the League of Nations. An
9 air of uneasiness prevailed throughout the country,
10 and there was utter confusion both politically and
11 ideologically.

12 "I had an idea of my own, with which I wanted
13 to appeal to my fellow compatriots. My aforementioned
14 speech was to restrain the people from corrupt customs
15 and from habits which prevailed throughout the country,
16 and to encourage them to further their recognition
17 of the international relations, and, by doing so, to
18 quiet the people's mind which was apt to run to
19 extremes.

20 "I advocated in this speech that the real ob-
21 ject of national defense is not in waging war, but in
22 protecting and securing morals and justice; that the
23 troops of Japan should not make it their first object
24 to blindly resort to armed force, but that they
25 should place the first importance in securing morals,

1 and thus I requested the self-reflection of the
2 people over the circumstances in which they were, in
3 order to enhance their culture.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

"I was not concerned in any way in the manufacture of this film. I trust the section of the War Office in charge gave necessary warning to the manufacturers to be very careful not to provoke international feeling by this film. The above intention of mine was clearly manifested in 2nd, 3rd, 4th, 6th, 7th and 12th reels of this film.

"I have used this expression of emergency on several other occasions and other documentary evidence bearing this title of emergency will clarify what I meant by this expression.

"I made a speech in the summer of 1933 . . . in which I said, 'What is needed by the people of emergency Japan is the watchword, don't reject others, don't abuse others, don't blame others, but cultivate your character.' I also told the younger generations of Japan the state of mind that they should have, 'Don't be satisfied by finding yourself alone contented. Cooperate with and assist others in bringing about peace and welfare of the people. Don't criticize the faults of others. Be generous and broad-minded. The peace of the world and your own welfare will be realized by observing the above. Be kind to foreigners and take into your consideration the welfare of the foreign countries. Let us teach the world

the path of humanity to reach world peace.'

"I advocated these principles in connection with the expression 'Emergency' and I tried to introduce this principle into the film when it was manufactured in dealing with the subject of the fundamental principle of the Japanese troops. By this I intended to show the aspiration of Japan of cooperating with the world in realizing peace on earth.

"There were some minor points which, due to technical reasons and because of the intention of the manufacturer to cater to the taste of the lower standard of people, were not quite up to my original intention, but as a whole, I considered that the film was faultless. I never heard from anyone that the film made any acute impression on the spectators.

"(b) My articles in 'Mombu Jiho' while I was the Education Minister and my speeches and broadcasts that I made during that period were nothing but the routine work of an Education Minister, and they were not delivered in connection with any incident in particular. The prosecution depicted several words as being provocative, but I contend that the Incident was going on at that time and expression of that kind was quite common with the general public and there was nothing strange in that. Those speeches and articles

1 were prepared in such a way that one can really appre-
2 ciate my purported principle only when he reads through
3 the whole text. I never considered them as giving en-
4 couragement to the expansion of the Incident or
5 instigating aggression. Lastly, as can be seen from
6 what I have explained, at no time did I conspire with
7 anyone to commit, nor did I commit myself personally,
8 directly or indirectly, any of the crimes charged by
9 the prosecution. On the contrary, I did everything in
10 my power to avoid war and the tragic consequences in
11 which Japan finds herself today."

12 Signed, ARAKI, Sadao.

13 If your Honor pleases, on page 12 of the
14 affidavit, at the bottom of the page, it is stated
15 that there was a visit by Mr. Henry Pu-Yi wherein the
16 accused, ARAKI, had a conversation with him in 1934.
17 That should read 1935.

18 An additional correction, if the Court pleases.
19 In two paragraphs above that there is reference made
20 to speeches made by the Premier. It should be Foreign
21 Minister.
22

23 THE PRESIDENT: Was that Mr. Ting?

24 MR. McMANUS: UCHIDA was the Foreign Minister
25 at that time, if your Honor please.

THE PRESIDENT: Does the witness swear that

those corrections state the facts?

1 MR. McMANUS: I shall ask him, your Honor.

2 BY MR. McMANUS:

3 Q General ARAKI, are the statements you made
4 in your affidavit true?

5 A It is true.

6 THE PRESIDENT: No, this affidavit is being
7 amended without reference to him.

8 MR. McMANUS: I shall ask him about that,
9 your Honor.

10 THE PRESIDENT: It is pretty irregular.

11 BY MR. McMANUS:

12 Q General, are the facts just stated, amending
13 the affidavit -- are they true as amended?

14 A Yes.

15 MR. McMANUS: Now, if the Court pleases, there
16 are just a few other questions I should like to put
17 to this witness concerning his direct examination.

18 Q General ARAKI, the prosecution offered in
19 evidence an excerpt from the Japan Advertiser, ex-
20 hibit 671-A, which is a report of your speech as
21 Education Minister on July 11, 1938, in Osaka at the
22 Osaka Political and Economic Research Association, in
23 which you are charged to have said that Japan's
24 determination to fight against the Soviet and China
25

1 was sufficiently strong to last more than ten years.
2 This article of the Japan Advertiser was based on the
3 report of the Asahi Newspaper.

4 Did you make a speech on the 11th of July
5 1938 at the Osaka Political and Economic Research
6 Association in Osaka?

7 A Yes, I did.

8 Q Did you say on that occasion what was alleged
9 by the prosecution in exhibit No. 671-A?

10 A The article in question was written in a very
11 vague manner and it was very difficult to grasp the
12 meaning of the article. The point that was just men-
13 tioned -- I did not state anything concerning the point
14 which was just mentioned to me.

15 Q Then what was it you said that was mis-
16 interpreted by the paper, General?

17 A The facts of the situation are as follows:
18 This Political and Economic Research Association came
19 to me suddenly and asked me to make a few remarks.
20 At that time the question of controlled economy was
21 being discussed and it was being advocated that people
22 should go barefoot and wear wooden clogs instead of
23 shoes. In such a state of affairs it would be diffi-
24 cult to conduct a long-range war for ten or twenty
25 years, and it was my opinion that in such a state of

1 affairs a long protracted war, lasting ten or twenty
2 years, Japan could not endure such a protracted war --
3 such an affair. Not war, an affair.

4 THE MONITOR: Strike out the "war" and just
5 say, with such an idea it would be impossible for
6 Japan to endure an affair which may last ten or twenty
7 years.

8 THE PRESIDENT: Who said strike out "war",
9 the witness or the interpreter?

10 THE MONITOR: The interpreter, sir. That
11 was a correction by the monitor.

12 THE PRESIDENT: Did the witness at any time
13 use the word "war"?

14 THE MONITOR: No, sir.

15 A (Continued) And therefore I told the Economic
16 Association that instead of getting all in a dither and
17 taking hurried steps to enforce controlled economy,
18 they should take time so that things could be done from
19 a sound basis. Immediately after this speech I made
20 a speech to the same effect at the Osaka Public Hall
21 and therefore if this speech is read it will not be
22 necessary for me to make any further remarks.

23 MR. McMANUS: May the witness see defense
24 document 674?

25 Q General, I now show you defense document 674

1 and ask you whether or not it is a copy of a hand-
2 written statement tendered by you to the prosecution
3 during the month of February 1946, in reply to ques-
4 tions submitted to you by Mr. Morrow and Mr. Hyder.

5 THE PRESIDENT: Have you asked the prosecu-
6 tion to produce the original of that, Mr. McManus?

7 MR. McMANUS: Yes, your Honor.

8 A Although I have not read the whole document,
9 judging from the title and from a brief glance at the
10 whole, I think this is that statement.

11 THE PRESIDENT: Mr. Comyns Carr.

12 MR. COMYNS CARR: Your Honor, we have
13 supplied the copy of this and we have the original,
14 but I am not aware that anybody was asked to produce
15 it. We are quite ready to do so, of course, if de-
16 sired.

17
18
19
20
21
22
23
24
25

S
p
r
a
t
t
&
D
u
d
a

1 THE PRESIDENT: If the original is available
2 to you, Mr. McManus, you must produce it and not a
3 copy.

4 MR. McMANUS: If your Honor please, I
5 requested Mr. Hyder and Mr. Morrow for the original
6 of this document. At that time they informed me
7 that the original was mislaid or they could not find
8 it. They did say, however, that they had a transla-
9 tion of the original, and they supplied me with that
10 translation. I also asked them at that time for two
11 other statements which accompany this one. They
12 supplied me one other, which is defense document
13 2487 and stated at that time they could not supply
14 me with the third copy because all these documents,
15 the originals, according to Mr. Hyder and Mr. Morrow,
16 were mislaid or could not be found at that time.
17 Consequently, I assumed that the copies have not
18 been found as yet -- that the originals had not been
19 found as yet, and therefore I proceeded on the basis
20 that I could introduce these translations which I
21 received from the prosecutors themselves.

22 THE PRESIDENT: Mr. Comyns Carr.

23 MR. COMYNS CARR: I find that I was mistaken
24 in saying that we have the originals in the sense of
25 the Japanese originals. What we have and what we

1 have supplied a copy of is a translation made at
2 that time.

3 THE PRESIDENT: That explanation is satis-
4 factory.

5 MR. McMANUS: May the witness be shown
6 document 2487, please.

7 Q Now, General, I ask you whether or not this
8 is another handwritten statement submitted to the
9 prosecution during the month of February 1946 in
10 response to questions submitted to you by Mr. Hyder
11 and Mr. Morrow?

12 A That is the document which I wrote by my-
13 self, in my own hand. I do not believe this is the
14 original which I handed to Mr. Hyder; I believe it is
15 a copy. An explanation to this effect follows later
16 in this document -- is given in this document.

17 MR. McMANUS: At this time, if the Court
18 pleases, I tender in evidence document 674 and docu-
19 ment 2487.

20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. COMYNS CARR: May it please the Tribunal,
22 the prosecution objects to document 674, which has
23 already been tendered and rejected by this Tribunal
24 at page 18,383 and onwards, not for the reason stated
25 in the affidavit, that it would be better put in at

1 this time than at the time it was tendered, but for
2 the reason stated by the President: "I have no doubt
3 that the prosecution would gladly receive from this
4 accused a confession but nothing in the nature of an
5 exculpation. What an accused said in answer to a
6 prosecution interrogator, although tending to excul-
7 pate the accused, would of course be admitted if it
8 were relevant; but this is not in the same class."

9 In introducing the statement my friend put
10 a leading question to the witness, suggesting to him
11 that this was in answer to questions by the prosecu-
12 tion. The affidavit at the top of page 39 shows
13 plainly that that is contrary to the fact on the
14 witness' own statement. It was made, according to
15 him, at his own suggestion in the course of the inter-
16 rogation.

17 THE PRESIDENT: Well, it was tendered before
18 in a general phase. Now it is tendered on behalf of
19 the accused himself. I think we would be inclined
20 to admit it if it could by any stretch be regarded
21 as an answer to the persons interrogating him.

22
23 MR. COMYNS CARR: Your Honor, I was coming
24 to that point, and that is why I am objecting to this
25 first document but not to the second.

THE PRESIDENT: I see.

1 MR. COMYNS CARR: The first document is a
2 long speech or lecture or essay of twenty-three pages,
3 most of which has nothing whatever to do with the
4 subjects on which he was being interrogated, but
5 relates to his experiences in World War I and the
6 ideas which he formed as a result of those exper-
7 iences, all of which, irrelevant though in my sub-
8 mission it is, is contained in the affidavit.

9 THE PRESIDENT: You contend it is repe-
10 titive?

11 MR. CARR: Repetitive and irrelevant; mostly
12 irrelevant.

13 THE PRESIDENT: It is hardly likely that he
14 had made in this document now tendered a point which
15 he omitted from his affidavit, but it may be so.

16
17
18
19

20
21
22
23
24
25

1 MR. COMYNS CARR: Your Honor, intimated when
2 rejecting it before that the proper place to make
3 these statements if he wanted to was in the witness
4 box.

5 MR. McMANUS: That is exactly why I am
6 offering it at this time, your Honor.

7 MR. COMYNS CARR: That is no reason why it
8 should be said twice, in my submission, your Honor.
9 The fact that he said it on some previous occasion
10 does not add anything to its weight.

11 The second document, 2487, is strictly rele-
12 vant both to the matters in issue and also to the
13 question as to the correctness of the interrogation,
14 and to that, therefore, we do not object.

15 MR. McMANUS: If your Honor pleases, the
16 prosecutor's argument seems quite inconsistent. They
17 object to one and do not object to the other, and they
18 are both in the same category.

19 If the Court pleases, I submit that if the
20 prosecutor offers the interrogations of the accused
21 ARAKI right after the Indictment and before this trial
22 began, they should offer all statements of the accused
23 as a result of such interrogations, and not only part
24 of them. I further call the attention of the Tribunal
25 to the fact that this statement was made before the

1 accused ARAKI was indicted.

2 THE PRESIDENT: What is there in 674 that
3 is not in the affidavit, apart from so many words?

4 MR. McMANUS: It explains further the ideas
5 of the accused ARAKI, and it gives in more detail his
6 dealing and the teachings to the soldiers and his
7 connection with the army. Further, it explains the
8 internal and external conditions of Japan at that
9 time.

10 THE PRESIDENT: By a majority, the Tribunal
11 sustains the objection to document 674 and rejects it.

12 Document 2487 is admitted on the usual terms.

13 MR. McMANUS: If your Honor pleases, I with-
14 draw the tender of document 2487, in view of the fact
15 that the objection has been sustained concerning
16 document 674, as I feel both of them must be read
17 together as they are both part of the accused's state-
18 ments. So I therefore withdraw the tender of the
19 second document.

20 THE PRESIDENT: No, there is no ground for
21 withdrawal after it has been accepted.

22 MR. McMANUS: It is my contention, if the
23 Court pleases, that the document cannot be read alone.
24 It is part--

25 THE PRESIDENT: That is only a contention.

1 You can, if you wish, say you do not rely on it, but
2 it is before the Court and it must be considered by
3 the Tribunal.

4 CLERK OF THE COURT: Defense document 2487
5 will receive exhibit No. 3162.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3162 and received in evidence.)

9 MR. McMANUS: If the Tribunal pleases, I do
10 not propose to read the document at this time.

11 ' Now if the Court pleases, I should like some
12 direction from the Tribunal. I have several other
13 documents that I should like to have this witness
14 identify so that they might possibly be received into
15 evidence. I request the Tribunal to advise me whether
16 or not the identification of these documents should
17 be continued during the direct presentation of the
18 case of the accused, or at such time after the cross-
19 examination.

20 THE PRESIDENT: We do not advise. We direct.
21 But you must do as you think fit, and we will give
22 our directions accordingly. We do not advise you or
23 direct you to take any particular course at present.

24 MR. McMANUS: May the witness be shown defense
25 document 2137.

1 MR. COMYNS CARR: According to the witness'
2 last answer, he could not answer the question now put
3 to him.

4 MR. McMANUS: Your Honor, he merely said that
5 the book was explained to him by an English inter-
6 preter, and he said it was a correct report.

7 THE PRESIDENT: I think the objection is
8 well taken.

9 MR. McMANUS: If your Honor pleases, may I
10 continue and try further to identify this document?

11 Q General, you read document 2137 in Japanese,
12 did you not?

13 A Yes.

14 Q The document 2137 that you read in Japanese,
15 is that a true and correct report of the interview
16 that you granted to Hugh Byas on January 16?

17 A Yes.
18
19
20
21
22
23
24
25

W
O
l
f
&
L
e
f
f
e
r

1 MR. McMANUS: At this time, I offer document
2 2137 in evidence, if the Court please.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: May it please your Honor,
5 we object to this document, which is one of a very
6 numerous class in this list. It merely shows that in
7 an interview with this American press correspondent
8 the accused made a number of unexceptionable state-
9 ments about Manchuria in marked contract with the
10 prosecution's evidence as to statements which he made
11 on other occasions.

12 In our submission, if you are charged with
13 stealing something on Friday, it is no answer to show
14 you stole nothing on Saturday and that you taught a
15 class not to steal on Sunday. Or, to take a closer
16 analogy, if you are charged with publishing libel about
17 a man on Friday, it is no answer to show that you pub-
18 lished a laudatory statement about him on Saturday.

19 And, these documents, which merely show that,
20 for Western consumption, the accused made a number of
21 specific or unexceptionable speeches, in my submission,
22 throw no light at all on the question of whether the
23 other speeches and other writings and, in particular,
24 the acts, which the prosecution have proved, make out
25 the case against him.

1 MR. McMANUS: If your Honor pleases, first of
2 all, Mr. Hugh Byas is a British correspondent, not an
3 American correspondent.

4 Now, if your Honor pleases, the interview
5 depicts the ideas of the War Minister at the time he
6 was interviewed by a correspondent and gives his ideas,
7 which I think is quite pertinent for the Court to know
8 at this time.

9 THE PRESIDENT: You might put it this way:
10 He is charged with having a guilty mind throughout a
11 long period.

12 MR. McMANUS: Then, if your Honor pleases,
13 the prosecution seems to take that for granted. They
14 seem to take the fact that the man is found guilty al-
15 ready because they have said so, because they have sub-
16 mitted their charges.

17 I certainly think the Court should take
18 counterevidence, which is in direct contradiction to
19 what the prosecution charges are, so that the Court
20 may weigh both sides of the question.
21
22
23
24
25

1 THE PRESIDENT: Then, it is put this way by
2 a Colleague: Well, suppose he expresses murderous
3 sentiments on Thursday, would any pious sentiments
4 expressed on Friday or Saturday be relevant? Would
5 they tend to counteract his murderous sentiments?
6 If you are entitled to get in these expressions to Mr.
7 Byas, you are entitled to get in expressions to any-
8 body else. Mr. Byas doesn't stand in any privileged
9 position, and you can get them in for every day of the
10 period over which he is charged, no matter to whom he
11 expressed them. There is no limit.

12 MR. McMANUS: If the Court please, might I
13 respectfully point out that the analogy suggested by
14 one of your Honor's Colleagues, does not seem to have
15 too much weight for this reason: That it is still
16 Thursday. It is exactly at the time of the Manchurian
17 Incident when ARAKI gave this interview to Hugh Byas.

18 THE PRESIDENT: Without making any suggestion
19 against the accused, a clever conspirator would want to
20 hide his deeds and probably would express pious sentiment
21 to some people, especially to people publishing books.
22 For that very reason, self-serving statements were not
23 admitted in any national court. If they were, there
24 would be no limit to the amount of evidence that a
25 man charged with conspiracy could give of that kind.

1 But, I do not overlook the fact that the test is
2 pro'ative value. It is a matter for us to decide.

3 MR. McMANUS: If your Honor pleases, this
4 document is not offered for the purpose of showing the
5 importance of the person to whom it was given. It is
6 given for the purpose of showing what ARAKI himself
7 said, what ARAKI's ideas were; whether it were to a
8 newspaperman, whether it were to anybody at all.

9 THE PRESIDENT: By a majority the Court
10 sustains the objection and rejects the document.

11 We will recess for fifteen minutes.

12 (Whereupon, at 1045, a recess was
13 taken until 1100, after which the proceed-
14 ings were resumed as follows:)

15 - - -
16
17
18
19
20
21
22
23
24
25

R
e
i
c
h
e
r
s
&
K
a
p
l
e
a
u

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: With the Tribunal's per-
4 mission, the accused TOGO will be absent from the
5 court-room for the rest of the session.

6 Mr. McManus.

7 MR. McMANUS: May the witness be shown defense
8 document 2136?

9 THE PRESIDENT: This seems to be the same
10 kind of thing, Mr. McManus.

11 MR. McMANUS: Yes, your Honor, but I am sub-
12 mitting it on the basis that your Honor, as you sugges-
13 ted once before, would consider each document by it-
14 self.

15 THE PRESIDENT: That doesn't mean that we
16 will consider each document in the same class by it-
17 self. You want a record of these things, so just
18 put them together and tender them as one, Mr. McManus.
19 You can even describe what they are, interviews between
20 the accused and the different correspondents, stating
21 the time and place. That is sufficient.

22 MR. McMANUS: If your Honor pleases, I feel
23 as though I did not exhaust my complete argument on
24 the first document; I have some additional points,
25 and I ask the Tribunal to hear me on this particular

1 document.

2 THE PRESIDENT: This is most irregular and
3 we won't do irregular things. If we did, this Court
4 would have a lot to answer for.

5 MR. McMANUS: If your Honor please, I assure
6 the Tribunal I shall be very, very brief.

7 THE PRESIDENT: The question is one of prin-
8 ciple, not of brevity. You wouldn't dare ask any
9 court in the United States to do such a thing.

10 MR. McMANUS: I have some arguments on this
11 document which I didn't have on the other, if the
12 Court please. It is a different document and I am just
13 requesting the Tribunal to hear me briefly on this
14 particular document.

15 THE PRESIDENT: This document is in exactly
16 the same position as the one just rejected. It is an
17 interview between ARAKI and the Associated Press corres-
18 pondent.

19 MR. McMANUS: Your Honor, I contend that this
20 statement, as it was made at the time, is practically
21 part of the res gestae. Furthermore, it shows the
22 state of mind or the mens rea of the accused ARAKI
23 at the time; and we will prove later that his actions
24 which followed coincided with his state of mind.
25

THE PRESIDENT: The state of mind argument

1 was raised by me on the first document. It wasn't
2 overlooked. Well, I will take the views of my
3 colleagues, but if we give a decision on one docu-
4 ment and immediately after reverse it for no good
5 reason on the next, where do we stand?

6 By a majority the objection is upheld and the
7 document rejected.

8 MR. McMANUS: I now ask that the witness be
9 shown defense document 1899-D.

10 I believe the witness is looking at defense
11 document 1835. 1899-D is the one I request that he be
12 shown.

13 THE PRESIDENT: Apparently the Marshal of the
14 court hasn't that.

15 Mr. Comyns Carr.

16 MR. COMYNS CARR: If your Honor pleases, no
17 such document is on the list served upon us, nor, as
18 far as I can place it, is the document on the order
19 of proof.

20 I am mistaken.

21 THE PRESIDENT: It is on the Judges order of
22 proof.

23 MR. McMANUS: Mr. Carr stated he overlooked
24 it, that it is on his order of proof, your Honor.

25 (Whereupon, Mr. Comyns Carr took a posi-

tion tion in front of the lectern.)

THE PRESIDENT: It is not tendered yet, Mr. Comyns Carr.

MR. McMANUS: May I put the question to the witness, if the Court pleases?

Q General, I show you a statement by General UEDA depicting his efforts to settle the Shanghai Incident. Will you tell us whether or not you directed General UEDA to make this statement, or is this the statement you told General UEDA to make?

MR. COMYNS CARR: The prosecution objects to that question. This is one of the type of documents which is, in our submission, covered by the uncompleted argument, which is to be resumed as soon as my friend has finished asking the witness questions. In our submission, its admissibility or otherwise will be covered by the decision on that point.

THE PRESIDENT: His direction given to the army, either given by himself or others, would not be in the nature of a self-serving statement at all.

MR. COMYNS CARR: Your Honor, the point I am making has nothing to do with self-serving statements. The point is that the document is part of the general history of that phase --

THE PRESIDENT: Oh, I see.

1 MR. COMYNS CARR (continuing): -- and
2 whether it will be admitted at this stage depends upon
3 the result of the application which the learned Chief
4 Prosecutor made yesterday which has not yet been con-
5 cluded.

6 THE PRESIDENT: But did ARAKI make this state-
7 ment or did he get General UEDA to make it?

8 MR. McMANUS: It is my intention to bring
9 out through the witness that he instructed General
10 UEDA to make it.

11 THE PRESIDENT: He should be at liberty to
12 state his own personal part in these matters. That
13 was recognized yesterday by the learned Chief Counsel
14 when he said there may be exceptions. This may be one.

15 By a majority the Court overrules the objec-
16 tion and allows the question.

17 BY MR. McMANUS (Continuing):

18 Q Will you please answer the question, General?

19 A The document, which was just shown to me was a
20 different one. I would like to have the proper one
21 shown to me.

22 MARSHAL OF THE COURT: 1899-D? Is that the
23 one you want?

24 MR. McMANUS: Yes.

25 (Whereupon, a document was handed to the

witness.)

THE WITNESS: This is a statement made by Divisional Commander UEDA on the front lines, and the contents of this statement include the instructions which I gave him at the time he left for his post.

THE INTERPRETER: "Based on his understanding of my intention as embodied in instructions give him at his departure."

MR. McMANUS: I offer same in evidence, if the Court pleases.

THE PRESIDENT: Were the instructions in writing?

THE WITNESS: I recognize -- I believe that the instructions were given in writing.

THE PRESIDENT: This is admitted on the usual terms, without objection.

MR. McMANUS: At this point, if the Tribunal pleases, I have other documents, but I request that I may be permitted to suspend now so that the argument may be continued on the question raised by Mr. Keenan yesterday.

1 CLERK OF THE COURT: The book entitled
2 "A Diplomatic History of the Shanghai Incident",
3 printed in Japanese, will receive exhibit No. 3163
4 for identification only, and the excerpt therefrom,
5 being defense document 1899-D, will receive exhibit
6 No. 3163-A.

7 (Whereupon, the document above re-
8 ferred to was marked defense exhibit 3163-A
9 and received in evidence.)

10 MR. McMANUS: Mr. President, I request leave
11 of the Tribunal to identify additional documents after
12 the argument on the motion brought before this Tribu-
13 nal yesterday.

14 MR. COMYNS CARR: Your Honor, may I point out
15 that this procedure is a grave waste of time? The
16 Tribunal has on occasion allowed a few additional
17 questions beyond an affidavit, but has always said
18 that they should be few.

19 THE PRESIDENT: Mr. Comyns Carr, if we under-
20 stand rightly, he is tendering documents now, or pro-
21 poses to do so, and getting the witness to identify
22 them.

23 MR. COMYNS CARR: Yes, your Honor, but this
24 method is, in my submission, a grave waste of time.
25 If you will look at the top of page 6 of the affidavit,

1 the first new paragraph, it now appears that the doc-
2 ument which has just been admitted is the document
3 referred to in that paragraph, just as the two doc-
4 uments sent by the accused to the prosecution -- one
5 of which was admitted and one rejected -- were dealt
6 with in the affidavit on page 39. They could perfect-
7 ly well have been exhibited to the affidavit; but to
8 read paragraphs of the affidavit and then ask oral
9 questions to identify them afterwards has already in-
10 volved a grave waste of time and if persisted in will
11 involve a great deal more.

12 THE PRESIDENT: There is no reason that I can
13 discover why the document was not made an exhibit to
14 the affidavit. That would have saved any time being
15 spent here on identifying the document, but we will
16 waste more time by attempting to rectify it. We can
17 only hope that it won't be repeated in affidavits to
18 come. So far the affidavits have not been lacking in
19 that respect.

20 The Court will now hear the defense reply to
21 learned chief of counsel.

22 MR. LOGAN: The defense are unanimous in
23 opposing the application of the prosecution for a
24 "hard and fast ruling" to limit the scope of the
25 evidence to be offered in the individual phases.

1
2 This application is untimely as it should have been
3 made last February when the defendants commenced pres-
4 entation of evidence in the general phases.

5 Dr. KIYOSE stated in his opening statement,
6 on Pages 17,013 and 17,014 of the record, with respect
7 to the general phases: ". . . So the defendants and
8 their counsel have come to an agreement that they will
9 produce as far as possible, evidence in common where
10 the offenses charged are in common." With respect
11 to the individual phases he stated; "It may be prob-
12 able that since the interests. views and actions of
13 some of the accused were opposed to each other, con-
14 flicting evidence will be presented. In so doing
15 some of the accused may, from their own standpoint,
16 demand exceptions to the facts and evidence as adduced
17 in the above five divisions or may furnish other evi-
18 dence in their individual interest."

19
20 No objection was then made (by the prosecution)
21 to the procedure adopted by the defendants of present-
22 ing their evidence in general phases and in individual
23 phases.
24
25

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n

1 In following this procedure for various
2 reasons, such as divergence of views as to the gen-
3 eral facts, it became necessary from time to time for
4 the defendants to refrain from presenting some evidence
5 in the general phases. Also, some of the accused de-
6 sire to use the general evidence in his individual
7 case since he was more directly connected with it and
8 it would prove more effective for him if presented
9 then. An attempt at this late date to preclude such
10 evidence would result, we submit, in an unfair trial.

11 Furthermore, on page 17,004 of the record,
12 the prosecution was advised of our procedural intent
13 when we stated: "It is, therefore, necessary that the
14 accused reserve to themselves the right to present
15 their different views of the facts in their individual
16 opening statements and in the presentation of their in-
17 dividual cases." Similar reservations were made in
18 opening statements of other phases and still no ob-
19 jection by the prosecution.

20 Furthermore, some of the accused took spe-
21 cific objection to the introduction of some evidence
22 in the general phases and thus prosecution's claim,
23 with respect to the general phases that "they have of-
24 fered evidence on behalf of all of the defendants to
25 meet every item raised by the prosecution on this

1 question" is not supported by the record. If prose-
2 cution had sought in February the ruling it now seeks
3 that evidence would have been presented in the general
4 phases and the general phases would have taken that
5 much more time. By failure of the prosecution to ob-
6 ject to the procedure at those various times the ac-
7 cused will have been lulled into a false sense of se-
8 curity if the order prayed for is granted.

9 At times the Tribunal has indicated that
10 general evidence would be more appropriate in the
11 individual phases. For example, on page 25,891 of
12 the record the following appears:

13 "THE PRESIDENT: The majority of the Tribunal
14 think that as this affidavit is contested by some of
15 the accused it should not be read in the general phase.
16 Therefore, the objection is sustained. It may be read
17 on behalf of those individuals who support it, of
18 course, to other objections that are open."

19 We also recall other instances where docu-
20 ments of a general nature were rejected with the
21 ruling that if it could be shown in the individual
22 cases that any of the accused relied on the matter
23 set forth in the documents offered it could then be
24 presented. In a number of instances, witnesses who
25 were called in the general phases were not examined

1 by counsel for individual accused on matters concern-
2 ing that accused, because it was planned to recall
3 the witness in the individual case. In the interest
4 of a fair trial it is necessary that the accused be
5 permitted to recall those witnesses.

6 Another example is to be found as late as
7 August 12, 1947 on page 25,553 of the record where
8 the following appears: "THE PRESIDENT: It is only
9 in the general phases that you give the evidence that
10 establishes the facts in relation to all; in the in-
11 dividual phases you give the facts which influenced
12 the determination of the individual as well. And
13 this document would appear to fall in the latter
14 class."

15 There will be no plethora of documents and
16 materials presented in the individual phases as ar-
17 gued by the prosecution. The prosecution is unduly
18 apprehensive if it fears a rehash of evidence. We
19 should be trusted to that extent at least. On the
20 contrary, the evidence of a general nature for in-
21 dividual purposes will be confined to a minimum. Such
22 evidence may be classified as general in nature, but
23 it will be highly relevant to that accused's case.
24 Consequently, what each accused thought, did, saw
25 and heard and upon what matters he based his thinking

1 and action is highly relevant and material in view of
2 the serious charges alleged in the Indictment.

3 It is difficult to fully comprehend the mean-
4 ing of the prosecution's concept. To be sure, no de-
5 fendant from now on is to attempt to give general
6 evidence, as such. He will give only such evidence as
7 will explain his position in relation to the charges
8 against him. To promulgate a rule affecting all ac-
9 cused on the materiality, relevancy or repetitiveness
10 of evidence which has not yet been offered is untimely.
11 It is for the Tribunal to determine this at the proper
12 time.

13 The argument of the prosecution relative to
14 matters concerning the kind of evidence to be offered
15 in the individual defenses of these accused is inspired
16 only by the now pressing problem of shortening the
17 length of the trial. We, too, share in the recogni-
18 tion of the importance of this factor. But any pro-
19 cedural suggestion with this motive impelling it and
20 which is not at the same time efficacious in obtain-
21 ing a fair trial for those who here stand indicted,
22 violates the purpose of all our past endeavors.

23 From the foregoing it is apparent that the
24 accused have not been given a full opportunity to pre-
25 sent all the evidence they desire on the question of

1 of the existence of a conspiracy and substantive of-
2 fenses as stated by the prosecution.

3 The statistics on the number of witness and
4 time consumed by the defense and the duration of the
5 recesses, we submit, has no bearing on this application.
6 If it is of any moment, the prosecution has introduced
7 more than twice as many exhibits as has the defense.
8 The citation by the prosecution of the procedure at
9 the Nurenberg Trial is, of course, distinguishable.
10 In that case there were only four counts in the In-
11 dictment. Here we have fifty five. The time covered
12 in the Indictment here is much longer. In that trial
13 there was just one war whereas this trial involves the
14 Manchurian Incident, the China Affair and the Pacific
15 War. There are more accused in this case. The general
16 phases presented by the prosecution in this case had to
17 be met. The defense did not devise the prosecution's
18 method of procedure. Insofar as the time consumed by
19 the individual accused in the Nurenberg Trial is con-
20 cerned it is our estimate that each accused here will
21 not require so great a time. As a matter of fact, some
22 of the accused will not take the stand in this case.
23

24 Apparently the prosecution in the last part
25 of its argument advocates a limitation of the indivi-
dual cases solely to the testimony of the accused. He
would then be deprived of the right to submit corro-

beratory testimony which is contrary to the guarantee
of a fair trial as stated in the amended charter and
contrary to fundamental concepts of Anglo-Saxon Law.

I might say that this question arose in the
application by counsel for Admiral OKA, and he wishes
to say something at this time with respect to that
objection.

THE PRESIDENT: Mr. Roberts.

MR. ROBERTS: In view of the fact that the
application of the prosecution for an additional order
of limitation was based upon my application in Paper
No. 1048 for an order for the production of the wit-
nesses FUKUTOME and ONODA on behalf of my client,
OKA, I desire to point out to this Tribunal, just as
I stated in Chambers, that the first two items re-
ferred to in said application should be disregarded.
These were included because it was originally intended
to use these witness in the general phase. The third
item, which relates only to testimony concerning my
client's connection with the Japanese-American nego-
tiations and his attitude thereon, is the only one in
said application relied upon in this request for said
witnesses. It was stated in addition that said wit-
nesses were called to give information concerning the
attitude of my client to the note of December 7th,

1 delivered by Japan to the United States.

2 May I assure the Tribunal that it is also
3 the desire of counsel to bring this trial to a fair
4 and expeditious conclusion and in so doing it is not
5 my intention to re-introduce any proof which has been
6 adduced during the general phase, as I recognize
7 this to be unnecessary from a practical as well as
8 an evidentiary point of view.

9 However, considerable material and proof
10 were not submitted in the general phase for the
11 reason that it was not subscribed to by all of the
12 defendants, despite the fact that it might have
13 benefitted a majority of said defendants. Said proof
14 having been reserved for presentation in the case of
15 an individual defendant, certainly cannot be denied
16 admittance on behalf of said defendant, especially
17 when it serves to explain the connection of a defen-
18 ant with some incident or event.

19 Similarly, where proof has been of a personal
20 nature, it has not been offered in the general phase.
21 It may have some general aspects but may apply to only
22 one or two of the defendants and will be relied upon
23 by them to explain their connection with an incident
24 or event.
25

Any attempt to draw a thin line of demarcation

1 delivered by Japan to the United States.

2 May I assure the Tribunal that it is also
3 the desire of counsel to bring this trial to a fair
4 and expeditious conclusion and in so doing it is not
5 my intention to re-introduce any proof which has been
6 adduced during the general phase, as I recognize
7 this to be unnecessary from a practical as well as
8 an evidentiary point of view.

9 However, considerable material and proof
10 were not submitted in the general phase for the
11 reason that it was not subscribed to by all of the
12 defendants, despite the fact that it might have
13 benefitted a majority of said defendants. Said proof
14 having been reserved for presentation in the case of
15 an individual defendant, certainly cannot be denied
16 admittance on behalf of said defendant, especially
17 when it serves to explain the connection of a defen-
18 ant with some incident or event.

19 Similarly, where proof has been of a personal
20 nature, it has not been offered in the general phase.
21 It may have some general aspects but may apply to only
22 one or two of the defendants and will be relied upon
23 by them to explain their connection with an incident
24 or event.

25 Any attempt to draw a thin line of demarcation

1 between proof which may seem general and that which
2 may appear to be personal is a difficult and impos-
3 sible task for this Court to assume. The further
4 limitation of proof as suggested by the prosecution
5 is likewise a dangerous departure from present recog-
6 nized criminal procedure and if applied too strictly
7 may be tantamount to denial of a fair and impartial
8 trial of the accused.

9 It is respectfully submitted that the addi-
10 tional limitation order here proposed by the prose-
11 cution is neither practical nor susceptible of in-
12 telligent application. The present rule requiring
13 affidavits to be filed three days before a witness
14 is called is a sufficient safeguard against any at-
15 tempt on the part of counsel to unduly prolong this
16 trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE PRESIDENT: The Tribunal will consider
2 the matter; but I may say the Court has never permit-
3 ted repetitive evidence and, of its own motion, has
4 rejected it.

5 Mr. Chief of Counsel.

6 MR. KEENAN: Mr. President, may I have the
7 indulgence of the Court for a very few moments? At
8 the outset, I would emphasize the position of the
9 prosecution, that it desires no rule that will pre-
10 vent the accused from tendering relevant and material
11 documents and testimony from the witness stand. We
12 are seeking to avoid the presentation of evidence
13 grossly repetitive and often patently immaterial in
14 the course of these open proceedings, wasting the
15 precious hours available during the hearings before
16 this Tribunal. We suggest, Mr. President, that some
17 rules will have to be announced and applied by this
18 Tribunal to prevent a violation of the Charter in
19 the matter of prolonging these proceedings unjusti-
20 fiably and, in such manner, preventing the expeditious
21 hearing that is specifically provided for in the parts
22 of the Charter already respectfully brought to this
23 Tribunal's attention.

24 We realize the unusual nature of these pro-
25 ceedings and that any rule applied, naturally, will

1 have to be subject to exceptions. We do not believe
2 we have suggested the only method by which some limi-
3 tation can be placed upon the material to be offered
4 and the time to be consumed in the presentation of
5 the defense. We have never asked, as suggested by
6 defense counsel, that the remainder of the trial be
7 confined to the testimony of the accused. Quite to
8 the contrary: We recognize that other relevant and
9 proper evidence may be submitted. We have not asked
10 that that be excluded. We have not been served with
11 documents three days in advance of their presentation.
12 We would like to have the service at the same time
13 that the rule prescribes the Court to be served, and
14 we assure this Tribunal and the defense that we will
15 make good use of the time outside of Court to save
16 the time of everyone in the court during the court
17 proceedings.

18 We ask only, Mr. President, finally, for the
19 promulgation, adoption and enforcement of rules that,
20 while giving the accused full and fair opportunity
21 to present all proper matters of defense, will not
22 unduly impose upon the time of the Court. Instead
23 of the defense being lulled into a false sense of
24 security, there is the danger that we be lulled into
25 a soporific state so this trial would never end and

pass on to the great beyond without any result.

1 THE PRESIDENT: Throughout the trial, the
2 Tribunal has been consistent in rejecting everything
3 irrelevant, immaterial and repetitive and will con-
4 tinue to do so. We will reserve our decision.

5 Mr. McManus.

6 MR. McMANUS: It is not my intention to read
7 exhibit 3136-A at this time, if the Court please. I
8 shall proceed to another document.

9 May the witness be shown defense document
10 1899-A, please?

11 (Whereupon, a document was handed
12 to the witness.)

13 This is a statement of Army Commander SHIRA-
14 KAWA made to the 9th Division whereby he expressed a
15 reluctance to fight re the Shanghai Incident.
16

17 DIRECT EXAMINATION

18 BY MR. McMANUS (Continued):

19 Q General, can you tell us whether or not you
20 gave Commander SHIRAKAWA such instructions?

21 A The views -- the policies of the government
22 and of the army concurred, and the same instructions
23 which were given to Divisional Commander UEDA at the
24 time of his departure were also given to General
25 SHIRAKAWA at the time of his departure.

1 MR. McMANUS: I tender defense document
2 1899-A and request that it be received into evidence.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 1899-A
5 will receive exhibit No. 3163-B.

6 (Whereupon, the document above
7 referred to was marked defense exhibit No.
8 3163-B and received in evidence.)

9 MR. McMANUS: May the witness be shown de-
10 fense document 1899-B?

11 (Whereupon, a document was handed
12 to the witness.)

13 Q General, this is another statement made by
14 Commander SHIRAKAWA on March 3, 1942 showing a cessa-
15 tion of hostilities on the part of the Japanese Army.
16 Did you instruct Commander SHIRAKAWA to this effect?

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: Your Honor, in our submis-
19 sion, there must be some limit to this process. The
20 affidavit deals with Commander SHIRAKAWA at page 7.
21 It doesn't suggest anything of the kind. And to
22 endeavor to get in a statement which merely purports
23 to record something that happened in the past in the
24 guise of asking the witness whether he instructed the
25 General to make such a statement is, in my submission,

an abuse of the procedure altogether.

1 MR. McMANUS: If the Court pleases, merely
2 because the accused mentions these instructions in
3 his affidavit does not necessarily make them true
4 and correct, and I am offering these documents for
5 the purpose of corroborating what the accused had to
6 say in his affidavit. I feel as though the most ex-
7 peditious way to have these documents admitted is
8 through the defendant himself. These documents could
9 have been appeneded to the affidavit, but I would
10 necessarily have to go through the same procedure to
11 have them identified, submitted and admitted into
12 evidence.
13

14 MR. COMYNS CARR: If the document is merely
15 tendered as corroboration of the witness, there is
16 no need to waste time by asking the witness questions
17 about it. He cannot identify them.

18 THE PRESIDENT: Had it been an exhibit in
19 the affidavit, a much shorter form would have been
20 employed. Time has been wasted. This, of course,
21 may become cumulative, too, Mr. McManus. We must
22 watch that.

23 MR. McMANUS: If your Honor please, I have
24 done my best to try to expedite this trial, and this
25 procedure seems to be the most expeditious procedure

an abuse of the procedure altogether.

1 MR. McMANUS: If the Court pleases, merely
2 because the accused mentions these instructions in
3 his affidavit does not necessarily make them true
4 and correct, and I am offering these documents for
5 the purpose of corroborating what the accused had to
6 say in his affidavit. I feel as though the most ex-
7 peditious way to have these documents admitted is
8 through the defendant himself. These documents could
9 have been appeneded to the affidavit, but I would
10 necessarily have to go through the same procedure to
11 have them identified, submitted and admitted into
12 evidence.
13

14 MR. COMYNS CARR: If the document is merely
15 tendered as corroboration of the witness, there is
16 no need to waste time by asking the witness questions
17 about it. He cannot identify them.

18 THE PRESIDENT: Had it been an exhibit in
19 the affidavit, a much shorter form would have been
20 employed. Time has been wasted. This, of course,
21 may become cumulative, too, Mr. McManus. We must
22 watch that.

23 MR. McMANUS: If your Honor please, I have
24 done my best to try to expedite this trial, and this
25 procedure seems to be the most expeditious procedure

1 that I could think of, if the Court pleases. I will
2 state that most of these documents being presented
3 now are to corroborate the statements in the accused's
4 affidavit; and, if the prosecution will not make any
5 objections to corroborative evidence and admit them,
6 I am sure time would not be wasted.

7 THE PRESIDENT: Well, during the luncheon
8 adjournment you might devise some means of shortening
9 them further, Mr. McManus.

10 MR. McMANUS: I shall do that, sir.

11 Has your Honor given a ruling on the last
12 document, 1899-B, which I submitted?

13 THE PRESIDENT: No. I would like to consult
14 my colleagues about documents in this class. This is
15 not the only one. There are others.

16 We will adjourn until half-past one.

17 (Whereupon, at 1200, a recess was
18 taken.)

19 - - -
20
21
22
23
24
25

K
n
a
p
p
&
Y
e
l
d
e
n

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1340.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

- - -

S A D A O A R A K I, an accused, resumed the stand
and testified through Japanese interpreters as
follows:

THE PRESIDENT: We have come to a decision
on the matter raised by the learned chief of counsel.
It is a majority decision. During the general phase
certain evidence was tendered but rejected as being
more appropriate to the case of an individual or
individual accused. Such evidence may be tendered
again in the course of an individual case. Where
evidence is tendered and received in an individual
case there will, of course, be no need to tender such
evidence in other individual cases. If in the course
of an individual case evidence which might have been
received on a general phase is tendered it will not be
received in the individual case in the absence of con-
vincing reasons.

Mr. McManus.

MR. McMANUS: If your Honor pleases, during

1 the noon recess Mr. Carr and myself came to an agree-
2 ment, with the Court's permission, of course, that I
3 submit the accused ARAKI for cross-examination purposes
4 at this time so that at the time of the adjournment of
5 court this afternoon Mr. Carr and myself might have an
6 opportunity to go over the documents which I intend to
7 offer on the individual phase and possibly come to an
8 agreement as to some of them. However, as to those
9 on which we cannot agree we will respectfully request
10 the Court to permit the accused ARAKI after cross-
11 examination to remain on the witness stand to afford his
12 defense counsel an opportunity to endeavor to get such
13 documents as cannot be agreed upon identified through
14 the accused himself. We submit this for the Court's
15 approval.

16 THE PRESIDENT: The Court sees no objection
17 to that course.

18 MR. McMANUS: If your Honor pleases, then,
19 at this time the accused ARAKI is submitted for cross-
20 examination purposes.

21 THE PRESIDENT: Major Blakeney.

22 MR. BLAKENEY: Before cross-examination
23 occurs I should like to offer some additional examina-
24 tion of General ARAKI, and first on behalf of the
25 defendant TOGO.

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q General ARAKI, what is the extent of your acquaintance with the defendant TOGO, Shigenori?

A As public men I had hardly anything to do with him -- we had hardly anything to do with each other.

Q You have stated in your affidavit that at no time did you conspire with anyone to commit any of the crimes charged by the prosecution. You have read the Indictment, of course?

A Yes, I have.

Q Now I wish to ask you whether at any time between the first of January 1928 and the second of September 1945 you discussed with the defendant TOGO the formulation or execution of a plan that "Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein and bordering thereon and for that purpose (Japan) should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and

1 assurances, against any country or countries which
2 might oppose that purpose"?

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Prosecution objects to that
5 question as being an attempt to get this witness to
6 forswear the issue not only with regard to himself
7 but also with regard to another accused.

8 THE PRESIDENT: He has joined issue with the
9 prosecution in his plea of not guilty. He is being
10 asked in effect, are you guilty or not guilty.

11 MR. COMYNS CARR: And also, is TOGO guilty
12 or not guilty.
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. BLAKENEY: No, I did not ask that; I
2 asked him whether he had discussed the matter. It is
3 strictly factual.

4 MR. COMYNS CARR: That is open to the further
5 objection that conspiracy may exist without any dis-
6 cussion.

7 MR. BLAKENEY: I will come to that.

8 THE PRESIDENT: Co-conspirators may never see
9 one another, may never know of the existence of one
10 another, may never exchange a word, directly or in-
11 directly.

12 If it was alleged by the prosecution that a
13 certain conversation took place between the accused,
14 ARAKI, and the accused, TOGO, you would be able to
15 deny that.

16 MR. BLAKENEY: Apparently the prosecution's
17 suggestion is that if two men work toward the same
18 end or take steps which in result lead to the same
19 end, they are conspirators without more, but if I
20 understand correctly, the essence of conspiracy is
21 the plotting or the conspiring, the breathing to-
22 gether to achieve a lawful end.

23 THE PRESIDENT: Unless the prosecution have
24 given evidence that these two did have a discussion,
25 we cannot find that they did have one, and you are

1 beating the air, but that does not preclude a finding
2 of conspiracy against one or both. In his affidavit
3 which has been read he has already stated he did not
4 conspire with anybody.

5 MR. BLAKENEY: That passage, of course, I
6 just quoted to him with the intention of trying to
7 enlarge on it in case the Tribunal should consider
8 that to be a mere statement of conclusion. It was my
9 position that if the defense was to attempt success-
10 fully to negate the allegation of conspiracy, we would
11 have to disprove by the testimony of those who know
12 that they had planned, plotted, conspired, whether
13 orally, directly, indirectly, in writing, by deed, or
14 otherwise.

15 If the law is that men who merely travel
16 converging roads until perhaps in ignorance of each
17 other's existence they arrive at the common destina-
18 tion are conspirators, then of course we are wholly
19 at the mercy of chance.

20 THE PRESIDENT: Mr. Blakeney, neither you nor
21 I are responsible for the definition of conspiracy
22 or for its scope. Conspirators need not know each
23 other, they need not know of each other's existence,
24 let alone exchange words.

25 MR. BLAKENEY: But if they are to be convicted

1 under Count 1 of the Indictment, they must have par-
2 ticipated in the formulation or execution of a common
3 plan.

4 THE PRESIDENT: It is no use finding fault
5 with the definition of conspiracy or with the nature
6 of the evidence that supports the charge.

7 MR. BLAKENEY: I am not offering to find fault
8 with the definition; I am attempting to adduce strictly
9 factual evidence on the question of whether there was
10 a plan which imports agreement.

11 THE PRESIDENT: There certainly is a strong
12 division of opinion among my colleagues. I will take
13 their opinion about it.

14 One apparently thinks that you are entitled
15 to swear the issue. That might be the law in his
16 country; it is not in mine. I do not suggest you are
17 attempting to swear the issue.
18
19
20
21
22
23
24
25

ARAKI

DIRECT

20,201

D
u
d
a
&
S
p
r
a
t
t

1 MR. BLAKENEY: The only desire that I have,
2 I assure the Tribunal, is to extract the facts upon
3 which the issue can be determined, and I regret the
4 exceedingly great cost of time which this will probably
5 entail.

6 THE PRESIDENT: By a majority the objection
7 is upheld and the question disallowed.

8 BY MR. BLAKENEY:

9 Q General ARAKI, have you ever at any time
10 within the dates which I mentioned to you heard of
11 such a plan as that which I have outlined to you?

12 MR. COMYNS CARR: In my submission that is,
13 if possible, even more objectionable because it invites
14 gossip from any known or unknown source, in addition
15 to the objections made to the previous question.

16 THE PRESIDENT: I think I can safely say
17 that the majority are of the same opinion, but we will
18 hear you, Major Blakeney.

19 MR. BLAKENEY: I wish to be heard only to
20 say that I should have framed the question: Did you
21 ever hear from any of these accused?

22 THE PRESIDENT: It does not render the
23 question less objectionable, but I do not know whether
24 it is objected to in that form.

25 MR. COMYNS CARR: Your Honor, the question

1 is open to all the previous objections in that form,
2 and also to the objection that my learned friend does
3 not represent all the accused, who may not all be
4 desirous of wasting the time of the Court by offer-
5 ing such questions.

6 THE PRESIDENT: The objection is upheld and
7 the question disallowed.
8

9 MR. BLAKENEY: In order that the record may
10 be clear, I should like only to say that if per-
11 mitted I should have asked similar questions on
12 behalf of each of the three defendants whom I am today
13 representing, directed against each count of con-
14 spiracy wherein any of them is named with this de-
15 fendant, and should ask similar questions of any
16 defendant who in the future took the witness stand.
17

18 I am requested to state that this statement
19 is authorized not only on behalf of the defendants,
20 TOGO, UMEZU, and SHIGEMITSU, but also of the de-
21 fendants KIDO, KOISO, HIRANUMA, MINAMI, and DOHI-
22 HARA.

23 THE PRESIDENT: Colonel Warren.

24 MR. WARREN: Your Honor, the ruling of the
25 Tribunal I understand fully. However, by the very
nature of the crime of conspiracy as outlined by the

1 Court, by the wording of the Indictment and the
2 counts thereunder, of a common plan, it is our position
3 that -- that is, my position in defending DOHIHARA and
4 HIRANUMA, that if there was a common plan that some-
5 where down the line some of these men in the box who
6 are charged must have had contact with another.

7 THE PRESIDENT: We cannot allow the decision
8 to be reopened on your application.

9 MR. WARREN: Not at all, sir. I am about
10 to bring up a new proposition. This is not the first
11 time that I have been interrupted and an objection
12 interposed before I finished my statement. I ask
13 that I be accorded the courtesy due an attorney before
14 this Tribunal.

15 MR. COMYNS CARR: Your Honor, in my sub-
16 mission counsel has no right to make any statement
17 whatever at this stage. If he has a question he can
18 put it and the Tribunal will doubtless rule upon its
19 admissibility if objected to; but argument at this
20 point is inadmissible in my submission.

21 THE PRESIDENT: When Major Blakeney has
22 finished his examination we shall be only too happy
23 to hear you, Colonel Warren, if you also propose to
24 examine the witness.

25 MR. WARREN: He had finished.

1 THE PRESIDENT: The Tribunal still has
2 control of its own proceeding. We desire to hear
3 you, Major Blakeney, unless you have concluded.

4 MR. BLAKENEY: I had done, your Honor.

5 MR. WARREN: I would not presume to take
6 the microphone from an attorney who had not finished,
7 your Honor.

8 THE PRESIDENT: That attorney did not
9 announce to the Court that he had finished his exami-
10 nation. If he did I did not hear his announcement.

11 MR. WARREN: Now, your Honor, in view of
12 what I said before the objection was interposed, I
13 have a question which I feel that I should ask each
14 of the witnesses, each of the accused, who take the
15 stand as a witness. I want to know if your Honor
16 feels that the ruling covers that question. I will
17 tell you briefly what it is.

18 THE PRESIDENT: If you put a question to the
19 witness and objection, is taken the Tribunal will decide
20 on the objection.

21 MR. WARREN: Thank you, sir.

22 BY MR. WARREN:

23 Q General ARAKI, you have been accused by the
24 Indictment in this case of having conspired with many
25 of the accused under different counts. Did you ever

1 at any time enter into a conspiracy by word, act, or
2 deed to your knowledge with the accused DOHIHARA or
3 with the accused HIRANUMA?

4 THE PRESIDENT: The accused has already
5 answered that in his affidavit.

6 MR. WARREN: He has, your Honor. I wanted
7 to explain to the Court why I asked that. By a process
8 of elimination somewhere down the line if none of the
9 accused ever talked to these men, it would not appear
10 they could have entered into a common plan. That is
11 the reason, but if the ruling of the Court previously
12 covered it we shall not ask it any more. But I do
13 want to show that I should have asked those questions
14 of each of the accused who take the witness stand.
15

16 THE PRESIDENT: The accused has already
17 denied any conspiracy with any of the other accused.
18 He need not repeat his denial.
19
20
21
22
23
24
25

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: May it please the Tribunal,
3 subject to your approval and in the interests of time,
4 the prosecution has decided that it will not in
5 general be necessary to cross-examine this witness
6 with regard to matters already in evidence. We pro-
7 pose to put before the Tribunal references to the
8 exhibits and other evidence related to certain statements
9 in the affidavit of the accused upon which they bear.
10

11 There may be exceptional cases where we shall
12 think it necessary to cross-examine the accused with
13 regard to some matter already in evidence, but in
14 general it will be confined to new matter; chiefly to
15 questions based upon a number of excerpts from the
16 HARADA-SAIONJI Diary, a copy of which, in English and
17 Japanese, was deposited with your clerk on the 29th
18 August 1947 and has been and is available to the defense.

19 Strictly speaking, the excerpts themselves
20 can only become evidence, if at all, in rebuttal. But
21 in case the Tribunal should think it convenient we
22 are ready to hand to you and to the defense and to
23 the witness a copy of the several excerpts on which
24 the cross-examination will be based. This diary has
25 already formed the basis for a number of questions
which have been put to the accused MINAMI and other

witnesses.

It would be helpful to us if the Tribunal cared to indicate whether in their view the omission of cross-examination on matters already in evidence is acceptable.

THE PRESIDENT: We are not advising either side; not the prosecution or any accused.

MR. McMANUS: If the Tribunal pleases, I object to this line of questioning on the grounds that the HARADA-SAIONJI Diary contains numerous conclusions and opinions, and I do not think that the witness in the stand now should be cross-examined not only on new material but should not be cross-examined on conclusions or opinions of anyone. Furthermore--

THE PRESIDENT: Mr. McManus, we can decide only on the questions put if objections are made.

MR. McMANUS: I have made an objection, your Honor.

THE PRESIDENT: But we have not heard a question yet.

MR. COMYNS CARR: I will refer to the evidence and other exhibits which should be looked at by way of contrast to this witness' affidavit, attaching them to certain paragraphs thereof. Many of them, however, have reference to other paragraphs as well.

1 Paragraph beginning "At the end of 1931"
2 down to "such circumstances": evidence of INUKAI,
3 record page 1551.

4 Page 9 of the affidavit, paragraph reading
5 "Soon after the" down to "situation": Exhibit 226,
6 record page 2834.

7 Same page, paragraph beginning "The decision"
8 down to "order": Exhibit 187, page 2784; exhibit 222,
9 page 2817; exhibit 223, page 2825; exhibit 233,
10 page 2927; exhibit 234, page 2933; exhibit 225,
11 page 2829; exhibit 231, page 2919.

12 Page 10 of the affidavit, sentence beginning
13 "The attitude" down to "with it": Exhibit 226,
14 page 2834.

15 Page 10, paragraph beginning "However, pre-
16 servation" down to "nationals," and paragraph
17 beginning "The Kwantung Army" down to "exclusively":
18 Exhibit 227, page 2844.

19 Page 10, paragraph beginning "These reports"
20 down to "situation": Exhibit 228, page 2846.

21 THE PRESIDENT: Mr. Carr, a Member of the
22 Tribunal points out that the pages of the affidavit
23 do not appear in the transcript and it would be better
24 for you to give us the number of the subjects or the
25 chapters.

MR. COMYNS CARR: Your Honor, some of the chapters are so long it would be rather difficult to identify by that means, but I will give both, if that will suit the purpose.

Page 12 of the affidavit, chapter 7, part 2, paragraph beginning "The government of Japan" down to "ambassadors": Exhibit 222, record page 2817; 223, page 2825; 228, page 2846; and 229, page 2899.

Same page, 12, "That Japan had neither" down to "law": Exhibit 222, page 2817; 223, page 2825; 226, page 2834; 231, page 2919; 241, page 2972; 233, page 2927; 234, page 2933; 225, page 2829.

Page 13 of the affidavit -- I am afraid there is something wrong with the numbering of the sections. The next one to the one I read is numbered 10.

THE PRESIDENT: There is no 9 in my copy.

MR. COMYNS CARR: No, nor in mine.

Paragraph beginning "In the Jehol campaign" down to "drive": Exhibit 192-A, page 2269-70.

193 -- no, 192-A, page 2269, and 193, page 2273, paragraph 3.

W
O
l
f
2
&
3
L
4
e
f
5
l
e
6
r
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 1, paragraph 13 of the affidavit, the sentence beginning "As the War Minister" down to "diplomatic matters:" exhibit 1104, page 10,081; exhibit 2219, page 15,841; exhibit 2218, page 15,837; exhibit 2216, page 15,832.

Again, page 17, paragraph beginning "As for the problems" down to "independence:" exhibit 1104, page 10,081.

Same page, paragraph beginning "These explanations" down to "Nations:" same exhibit.

Page 19 -- I am not quite sure in which of the sections on this page that part is. It is either the end of 13 or the beginning of 14 -- paragraph beginning "Standing from the League" down to "witnesses:" exhibit 2222, page 15,845.

Page 20, section 14-A, paragraph beginning "To cope with this" down to "Soviet Union:" exhibit 668, page 7,332; exhibit 670, page 7,331.

Page 20 again, second section, paragraph beginning "I do not admit" down to "expression:" exhibit 746, page 7,720; exhibit 747, page 7,727; exhibit 671-A, page 7,336.

Same page, but section 14-B, sentence beginning "With regard to the" down to "matter:" exhibit 730, page 7,964; and exhibit 667, page 7,309.

1 Page 21, same section, sentence beginning
2 "Desire perfect independence" down to "comparison:"
3 exhibit 671-A, page 7,336.

4 Page 31 of the affidavit, section 20, para-
5 graph beginning "With regard to the" down to "matter:"
6 exhibit 730, page 7,964 -- oh, I beg your pardon, no.
7 Cut that out, please.

8 Page 31, section 20, paragraph beginning
9 "Under the circumstances" down to "administration:"
10 exhibit 2218, page 15,837.

11 Same page and section, paragraph beginning
12 "In 1937, the Educational" down to "enforcement:"
13 evidence of IWATMATSU, defense witness, pages 18,569
14 to 18,570.

15 Page 33, section 21, paragraph beginning "I
16 changed" down to "students:" evidence of IWATMATSU,
17 page 18,548.

18 Page 33, section 21, paragraph beginning "The
19 reformation" down to "militarized:" evidence of OUCHI,
20 pages 942, 943, 963, 964, and 965.

21 Page 33, section 21, paragraph beginning
22 "There were occasions" down to "Education Ministry:"
23 evidence of OUCHI, page 963.

24 Page 35, section numbered 23 -- although I
25 can find no No. 22 -- paragraph beginning "My duty" --

1 I beg your pardon -- page 35, section 24, paragraph
 2 beginning "My duty as Education Minister" down to
 3 "meeting:" exhibits 2218, page 15,837; 2219, page
 4 15,841; 271, page 3,460; 1291, page 11,695; 491,
 5 page 6037.
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 BY MR. COMYNS CARR (Continued):

2 Q Now, General ARAKI, on page 4, paragraph 2
3 of your affidavit and in section 28 of your affidavit,
4 beginning at page 38, you say that no reliance can be
5 placed upon your interrogations because the interpreters
6 were incompetent, and you say that the interpreters
7 admitted their incompetence.

8 MR. COMYNS CARR: Would Mr. Kildoyle kindly
9 stand up, please?

10 (Whereupon, Mr. Kildoyle arose.)

11 Q Would you turn around, General, and look at
12 him? He is behind you.

13 THE PRESIDENT: Bring him into the courtroom,
14 Mr. Carr.

15 MR. COMYNS CARR: Would you gentlemen stand
16 forward, please? Come forward here, Mr. Kildoyle, will
17 you please and turn towards the witness.

18 (Whereupon, Mr. Kildoyle and two other
19 men approached the center of the floor and faced
20 the witness.)

21 Q Do you remember this gentleman, General? He
22 was in army uniform when you saw him.

23 A I think I have seen him before.

24 Q He interpreted at your interrogations on no
25 less than eight occasions; don't you remember that?

1 A I do not remember his having come on so
many occasions.

2 THE PRESIDENT: Do you remember him having
3 come at all?

4 THE WITNESS: Yes, I do.

5 Q And four of the extracts from your interrogation
6 which have been put in evidence were interpreted by
7 him; do you remember that?

8 A I do not remember how many.

9 Q Is he one of those who you say admitted his
10 incompetence?

11 A No, that is not so. I do not -- When you
12 speak of his having been in uniform, I do not remember.
13 However, since the interpreters changed on many
14 occasions, I cannot say who came how many times and
15 who said what.

16 Q You speak a certain amount of English, don't
17 you, General?

18 A I can speak to a certain extent with the
19 help of a dictionary. However, according to the
20 Japanese fashion I would have to answer, "I do not
21 know."

22 Q You had a dictionary there at the interrogation,
23 didn't you?

24 A Yes, if you speak of a dictionary, I had a
25

1 midget dictionary, a pocket dictionary, of about
2 the size I just indicated.

3 THE MONITOR: "I do not remember whether it
4 was an English-Japanese or a Japanese-English dictionary,
5 but I did have one."

6 A (Continuing) I do not remember whether it
7 was this person who is standing here now to whom I
8 addressed myself then, but, if he was one of the inter-
9 preters, I think he must remember also that on many
10 occasions I could not understand what word -- exactly
11 what word was being meant, and, therefore, I would
12 pull the dictionary out of my pocket and point to a
13 certain word and ask if that was the word that was
14 being meant. The dictionary was about the thickness
15 I indicated and the size I indicated, and I do not
16 know how many words were in that dictionary altogether.

17 THE MONITOR: "And I am rather doubtful whether
18 I could actually call it a dictionary."

19 THE PRESIDENT: We will recess for fifteen
20 minutes.

21 (Whereupon, at 1445, a recess was
22 taken until 1505, after which the proceed-
23 ings were resumed as follows:)

24 - - -
25

R
e
i
c
h
e
r
s
&
K
a
p
l
e
a
u

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 BY MR. COMYNS CARR (Continued):

5 Q General, you have spoken about the small dic-
6 tionary you had. Do you remember that Mr. Kildoyle
7 had a large one?

8 A Are you asking whether I remember?

9 Q Yes.

10 A Yes, he had.

11 Q Both Japanese-English and English-Japanese?

12 A I don't remember for sure. However, I think
13 it was as you say.

14 Q And did you notice that if ever he was in
15 doubt about any word he consulted it?

16 A Yes, I knew that. It was that that made me so
17 uneasy.

18 Q Did you from time to time raise a query as to
19 the correctness of the English word that he was using?

20 A On a few occasions the English word was one
21 which I knew, and when the term employed was one con-
22 cerning which I was in doubt, I would ask him and then
23 the two of us would open the dictionary and look up
24 the word together. On some occasions this process
25 would sometimes take several minutes, and finally after

1 this had happened several times, I began to feel sorry
2 and that is why I offered to make a written statement.

3 Q That is just what I was going to put to you:
4 that whenever you objected to anything you and he had
5 a consultation and compared your dictionaries?

6 A Yes, that is so; and while I was able to carry
7 on a conversation with him in Japanese, I had no idea
8 how the terms were being translated into English, and
9 that is what made me feel so uneasy. If you desire,
10 I can tell you what my state of mind was at that time
11 regarding this.

12 Q I would rather you answered the question.

13 I suggest to you that whenever you raised a
14 query, the word ultimately put down was agreed between
15 you and him after you had compared dictionaries?
16

17 A No, that is not the way I felt.

18 THE MONITOR: Not necessarily.

19 Q And I suggest to you further that he was only
20 in need of consulting the dictionary when you used
21 some unusual or technical word?

22 A That is not so. To give an example: In the
23 phrase "Chian o kaifuku", "restoration of order," the
24 interpreter was unable to get the meaning of the word
25 "chian", or "order." Finally, he mixed up the word "chian",
or "order", with the word "Chiang" and asked whether

1 I meant Chiang Hsueh-liang, and from that time on I
 2 began to feel quite uneasy over the interpretation.
 3 I don't know whether it was the interpreter who is
 4 here now who did this, and it seems to me that the
 5 interpreters were much better in English than they were
 6 in Japanese. However, when the conversation turned on
 7 a difficult subject, I always felt quite uneasy.
 8 This wasn't an experience solely -- Correction:
 9 This wasn't the experience only I had. I believe it
 10 was the same with all other people who were interroga-
 11 ted at that time.

12 MR. COMYNS CARR: For the convenience of the
 13 Tribunal, I may mention that the exhibits translated by
 14 Mr. Kildoyle were 188-C, D, and E and 2218 and 2219.

15 Now would Mr. KAWASHIMA come forward?

16 (Whereupon, a person approached the
 17 center of the floor and faced the witness.)

18 Q Do you remember this gentleman, also in the
 19 uniform of the United States Army, interpreting on one
 20 occasion only, that is, exhibit 188-E?

21 A I am afraid I cannot recollect this person,
 22 since the previous person had distinguishing features.
 23 Now, on thinking it over, I am able to remember his
 24 face, but as to this person, I don't remember him at
 25 all.

1 Q I take it, therefore, you cannot say whether
2 he is one of those who confessed he was incompetent?

3 A I don't know.

4 MR. COMYNS CARR: Thank you, Mr. KAWASHIMA.

5 Now will Mr. Maxon step forward, please?

6 (Whereupon, a person approached the
7 center of the floor and faced the witness.)

8 Q Do you remember Mr. Maxon? He was then wear-
9 ing the uniform of a Commander in the United States
10 Navy, and he interpreted for you on three occasions,
11 one of which is exhibit 188-A.

12 A I am afraid it is difficult for me to
13 remember. Maybe if the Commander was wearing his navy
14 uniform I might be able to recognize him. However,
15 this is a difficult question and I am afraid I really
16 cannot say.

17 Q Do you remember that there was an officer in
18 naval uniform who interpreted on three occasions?

19 A I don't remember well. Anyway, as I have said,
20 the interpreters changed on several occasions and there
21 may have been navy men among them. I don't remember for
22 sure.

23 Q Do you remember whether this gentleman or any
24 navy man -- I think he was the only one -- was one of
25 those who you say admitted his incompetence?

A That is not so.

Q Do you remember whether this gentleman, or any Navy man -- I think there was only one -- do you remember whether you heard him say he admitted his incompetence?

A That is not so.

Q Do you remember that he also brought a dictionary with him in case a particularly difficult word should arise?

A I was not then interested in the features of the people who came. I cannot reply.

Q Did you know that he was teaching in a school in Japan when you were Education Minister?

A No, I don't believe he told me of that. It is not in my memory.

Q You know that all of the interrogations which these three gentlemen took were taken down in full by way of question and answer?

A I don't know for sure. I remember that during the early stages there was someone who was taking down notes in shorthand. However, I don't know who it was and I don't know what they were writing.

MR. COMYNE CARR: Thank you Mr. Maxon.

Q Now then, let us see: Take one example of the matters you complain of and see what it is that you really complain of: You say, at the top of page

41 of your affidavit, sub-paragraph 1, of section 28,
and again in the first new paragraph at the top of
page 4, that they wrongly wrote you down as saying
that you made a plan for the occupation of -- in one
place you say "Manchuria", and in the other "the Four
Eastern Provinces". Now, which part of it is it
that you complain of?

A May I have the exact words repeated, please?

Q I will read the paragraphs in your affidavit
for you, if you wish, General. I will read the one
on page 4: You say "In connection with this decision
of the Cabinet, there is an allegation in exhibit
No. 187 and No. 188 to the effect that I made a plan
for the occupation of the Four Eastern Provinces. This
is a mistake caused by the interpretation of an incom-
petent interpreter and it was entirely different from
the fact." Now, where is it wrong? Do you mean that
you did not make a plan?

A Yes, that is so.

Q You say you made no plan at all?

A What do you mean by plan?

Q You have used the word yourself.

A Although many of the documents are not at my
disposal now, I remember that shortly after the open-
ing of this trial documents 188-A, 188-B and 188-C were

1 presented to this Court, and although all three doc-
2 uments treat of the same subject, the wording of doc-
3 ument 188-C was comparatively understandable. The
4 other two used wording which was quite different
5 from document C, and this is an example of how, in
6 spite of the fact that the interpreters probably did
7 take great pains, their interpreting was not adequate.

8 Q Now would you mind answering my question?
9 Do you say that you did not make a plan?

10 A It is just as I have answered.

11 Q Well, please answer Yes or No. Did you make
12 a plan or didn't you?

13 A I have just replied that I did not make such
14 a plan.

15 Q Do you object to the word "occupation"?

16 A I object to the whole. In connection with the
17 word "occupation" which has just come up, I remember
18 that I spoke for quite some time with an interpreter
19 in an attempt to define just what was meant. The word
20 is "senryo" in Japanese.

21 Q Which interpreter?

22 A I do not remember.

23 Q Do you know that all three of the gentlemen
24 you have just seen took interrogations from you on this
25 subject, and all three of them have used the word

1 "occupy" or "occupation" as part of your answer or
2 as part of a question to which you took no exception.

3 A Later, in reading over the written account
4 of the interrogation, I saw the word "senryo" for
5 "occupation" for the first time, and I do not remember
6 whether that word was actually used during interroga-
7 tion or not.

8 THE INTERPRETER: Correction. I do not remem-
9 ber whether that word "occupied" was actually written
10 down at that time when I replied.

11 Q Do you say that whatever was done and decided
12 at that time when you first -- soon after you took
13 office, was not concerned with all of the Four Eastern
14 Provinces?

15 THE INTERPRETER: Will the reporter please
16 repeat the question?

17 (Whereupon, the last question was
18 read by the official court reporter.)

19 A I am afraid I cannot understand the import
20 of your question. However, if it concerns Manchuria,
21 of course it had to do with the Four Eastern Provinces
22
23
24
25

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n

1 Q It is not, of course, is it? Manchuria was
2 Three Eastern Provinces, and you chose to occupy
3 Jehol as well, making four.

4 A That is not correct. The term "Four Eastern
5 Provinces" was first used by Chiang Hsueh-liang around
6 the time when he declared his allegiance to the Kuo-
7 mintang. At that time he had already put the Prov-
8 ince of Jehol under his control and referred to the
9 regions which he controlled as the Four Eastern
10 Provinces.

11 Q Well, now, would you answer the original
12 question: Was it part of the plan, soon after you be-
13 came War Minister, that those Four Provinces should
14 be occupied by Japanese troops?

15 A I cannot understand the question very well,
16 but there were no plans to occupy the Four Eastern
17 Provinces either before or after I took office. I
18 can say definitely that there was none during the
19 time that I was the Minister. This is as I have re-
20 peatedly said.

21 Q Now, would you look at exhibit 3162, please,
22 which was admitted into evidence this morning but not
23 read.
24

25 (Whereupon, a document was handed
to the witness.)

1 Language Division, have you got exhibit
2 3162 which was put in evidence this morning?

3 THE MONITOR: Yes, we have.

4 Q (Continuing) Is that the handwritten state-
5 ment which you gave to Mr. Hyder, one of the prose-
6 cuting attorneys, on the 11th of February, 1946?

7 A As I said this morning, this, I believe, is
8 a copy of what I gave him at that time. However, I
9 wrote the same thing and handed it to Mr. Hyder at
10 that time. I remember.

11 Q Well, now, I want you to listen to parts of
12 it. The first paragraph: "On December 13, 1931 I
13 was appointed War Minister when I considered it most
14 important to stabilize the situation by mapping out
15 a general plan for the solution of various compli-
16 cated problems which then existed both inside and
17 outside this country." And then half way down the
18 next paragraph:

19 "At that time battles were being fought
20 covering an extensive area in Manchuria. In Northern
21 Manchuria disturbances were once subdued, but owing
22 to Ma Chen Chan's revolt the region was again thrown
23 into scenes of war, and our army had already occupied
24 Chichihar. Should the state of affairs have been
25 left as it was, there was no telling how far the war

1 disaster might have extended. Strategically speaking,
 2 our army was at war with Chan Hsin Liang's troops
 3 which were really powerful, and any slight error on the
 4 part of the army might have brought about an an-
 5 nihilation. Prior to this we had had bitter exper-
 6 iences of humiliation at Nikolayevsk, Chanan and
 7 Nanking, though matters were a little different in
 8 the last named place. In order not to repeat a
 9 similar blunder, and at the same time to avoid an
 10 all-round clash between Japan and China and also to
 11 limit disaster to the least possible extent, the af-
 12 fair had to be dealt with promptly and decisively
 13 as the disaster already had reached far by that time;
 14 otherwise, I judged it would go beyond control. In
 15 view of the fact that this incident had developed
 16 rather unplanned in the past it was necessary to make
 17 the following plan: I consulted the Premier, Finance
 18 Minister and the Chief Secretary and it was decided
 19 to restore public order, without delay, in the Liausi
 20 District which had been left in suspense and obscur-
 21 ity and at the same time to pacify the bandits who
 22 had still remained there disturbing public order.
 23 Because it was the time when the Diet was not in ses-
 24 sion, the necessary expense was decided to be drawn
 25 on the Emergency Expense account. When the Cabinet

1 action was taken on this matter necessary steps were
2 also taken through the Privy Council and completed.
3 It was some time between the 10th and the 20th of
4 December.

5 "The above mentioned plan was as follows:

6 "1. Aim: To restore public peace in Man-
7 churia promptly.

8 "2. The opponent: The Chiefs of the Four
9 East Provinces who were responsible for having put
10 the land into disorder.

11 "3. Area: Consequently the Four East Pro-
12 vinces under the control of Mr. Chiang.

13 "In the Privy Council the matter was dis-
14 cussed and two or three advisers who were present
15 asked questions and after answering them this was
16 approved.

17 "Especially Adviser EGI said that the matter
18 had been set forth logically consistent and clearly,
19 and furthermore, he encouraged me to go on with this
20 plan and try to restore public peace at once -- so I
21 remember. Thus the proposed expense (30,000,000 yen
22 or 50,000,000 yen) was approved for payment, Imme-
23 diately necessary procedures were taken and the Su-
24 preme Command Department actually started on operation.
25 In those days Chiang Hsin Liang seemed to be at Chin

Chiang Hsin Liang seemed to be at Chin

1 Chow in Liausi District, and then he moved to Jehol.

2 "In order to avoid an extension of the war
3 disaster, I decided to limit the force to a minimum
4 and to move the troops slowly, waiting for Mr. Chiang's
5 reconsideration; so I did not give a real mobilization
6 order to the troops on the field. However, the matter
7 did not get any better. I suppressed our army force
8 from going to a positive action till spring the fol-
9 lowing year. Also we kept to the policy not to go
10 beyond the boundary of the last province, under any
11 circumstances, and stay within the line of the Great
12 Wall. Although after the Jehol operation, the troops
13 twice advanced beyond the Great Wall for operation,
14 yet the Assistant Chief of the General Staff made an
15 urgent trip to the field at the command of the Em-
16 peror and ordered them to retreat and stay within
17 the Great Wall line."

18 Then you altered that last sentence to read:

19 "Although after the Jehol operation the
20 troops twice advanced beyond the Great Wall for oper-
21 ation, yet it was decided that the Assistant Chief of
22 the General Staff would make an urgent trip to the
23 field at the command of the Emperor and order them to
24 retreat and stay within the Great Wall line. However,
25 the matter was settled before he left."

I need not read any more of it.

1 What do you say is different about that
2 account which you wrote yourself from the account
3 given in the questions and answers taken down by the
4 three interpreters?

5 A This matter cannot be satisfactorily com-
6 puted unless I tell you of the circumstances in
7 which I handed this written document to Mr. Hyder.

8 Q You told us that in your affidavit, and you
9 needn't tell it again.

10 MR. McMANUS: I submit, if the Court pleases,
11 that this has not been thoroughly explained in the
12 affidavit; that I attempted this morning to have
13 document 674 admitted which, I stated, was part of
14 the same; and I think that under those circumstances
15 the witness should have an opportunity to explain
16 from the box.

17 THE PRESIDENT: I cannot see why, for the
18 purposes of this answer, any such explanation is re-
19 quired. He simply asked: What is the difference be-
20 tween the two answers? If an explanation is neces-
21 sary at some stage, give it, but not now.

22 A Although I believe it will be difficult for
23 you to understand -- although I believe you cannot
24 understand the situation unless I explain, in accord-
25 ance with your Honor's ruling I shall reply to that

1 question when it is asked me, and I shall now confine
2 my answer to the present question.

3 In the interrogation drawn up by the inter-
4 preter, the words "occupation of the Four Eastern
5 Provinces" came out, whereas, in my written state-
6 ment I have said that it was important that the strife
7 going on in Manchuria should cease immediately before
8 it developed into an all out clash between Japan and
9 China. That is where the great difference exists.

10 Q You did occupy the Four Eastern Provinces,
11 didn't you?

12 A No, they were not occupied.

13 Q Were not your troops at the end of the
14 operation in control of every part of them?

15 A I suppose you are aware of the establishment
16 of the State of Manchukuo. The real state of affairs
17 is that, after the establishment of Manchukuo, the
18 Japan-Manchukuo Protocol was signed; and, under this
19 Protocol, Japan obtained the right to station troops
20 in Manchukuo and thus fulfilled her international
21 obligations under that protocol.

22 Q And before the protocol was signed you
23 stationed them there without any right, didn't you?

24 A Japan's right to station troops along the
25 railway zone in Manchuria was established -- was

1 question when it is asked me, and I shall now confine
2 my answer to the present question.

3 In the interrogation drawn up by the inter-
4 preter, the words "occupation of the Four Eastern
5 Provinces" came out, whereas, in my written state-
6 ment I have said that it was important that the strife
7 going on in Manchuria should cease immediately before
8 it developed into an all out clash between Japan and
9 China. That is where the great difference exists.

10 Q You did occupy the Four Eastern Provinces,
11 didn't you?

12 A No, they were not occupied.

13 Q Were not your troops at the end of the
14 operation in control of every part of them?

15 A I suppose you are aware of the establishment
16 of the State of Manchukuo. The real state of affairs
17 is that, after the establishment of Manchukuo, the
18 Japan-Manchukuo Protocol was signed; and, under this
19 Protocol, Japan obtained the right to station troops
20 in Manchukuo and thus fulfilled her international
21 obligations under that protocol.

22 Q And before the protocol was signed you
23 stationed them there without any right, didn't you?

24 A Japan's right to station troops along the
25 railway zone in Manchuria was established -- was

1 based on treaties. When, later, the Japanese troops
2 went into action outside -- in areas outside the
3 railway zone, the Imperial Government declared on
4 several occasions that this action was being taken
5 in self defense; and, since peace and order had not
6 yet been restored, the troops did not withdraw into
7 the railway zone.

8 Q Now, in your statement I observe you use
9 the phrase that the troops were "to pacify the band-
10 its." How do troops pacify a bandit?

11 A That is a very detailed affair; and, unless
12 you give me some specific details, it is difficult
13 for me to answer.

14 Q I want to know what you meant by sending
15 your troops to pacify the bandits. You meant to
16 kill them, didn't you?

17 A I do not believe that was so.

18 THE PRESIDENT: I suppose he means "subdue."

19 Q Now, in your affidavit, page 14, Section
20 11, second paragraph, first sentence, you say, "The
21 Manchurian Incident was not primarily a war in the
22 sense of definition of international law." And in
23 exhibit 3162 you say, the second paragraph, about
24 eight lines down, "Strategically speaking, our army
25 was at war with Chan Hsin Liang's troops which were

really powerful" -- How do you reconcile those two statements?

A May I have the first quotation repeated? I was unable to get it clearly.

Q You said in your affidavit, "The Manchurian Incident was not primarily a war in the sense of definition of international law."

A I understand. In the first instance I meant that it was not a war, strictly speaking, as defined in international law; and in the second instance I meant that the enemy which was actually facing us at that time was really powerful and numerous.

Q And were his troops the bandits that you were talking about?

A No, that is not so.

Q What did you call his troops?

A Chiang Hsueh-liang's troops were the troops under Chiang Hsueh-liang's command, and the bandits were bandits.

Q What do you mean by a "bandit"?

A There are many different kinds of bandits. As a general description, I think you could say that bandits are those who acted lawlessly but without any special plans.

Q By "acting lawlessly," do you mean resisting

1 the Japanese?

2 A Those who act -- which violate peace and
3 order -- which disturb peace and order in the vari-
4 ous districts can be called lawless acts.

5 Q And the Japanese were the people who were,
6 according to you, trying to maintain peace and order,
7 were they not?

8 A Do you mean the Japanese or the Japanese
9 Army?

10 Q The Japanese Army.

11 A It was the duty of the Japanese Army to
12 maintain peace and order.

13 Q Now, on page 13 of your affidavit, para-
14 graph -- it should be 9, but it is really printed as
15 Part II of 7. Anyway, in the third paragraph on the
16 page you speak of the development of Manchoukuo after
17 you left office. You say it was not quite as it
18 should have been and that you were dissatisfied with
19 it and refrained from attending the 10th anniversary
20 celebration of its foundation. What were you dissatis-
21 fied about?
22

23 A At the time of the establishment of Manchuria
24 the persons who exercised sovereignty in Manchuria
25 announced their ideals. They stated, among other
~~things, that they wished to establish a bright and~~

1 peaceful country governed by the Kingly Way and
2 hoped to establish a country of high moral character
3 which would be a haven of peace. But, later, I be-
4 gan to feel that the actual carrying out of these
5 ideals was not in accordance with what I, myself,
6 had believed in. On the occasion of the 10th
7 anniversary of the founding of Manchoukuo, I remember
8 reading newspapers which carried many statistics on
9 the development of Manchoukuo and stated that Man-
10 choukuo had made such and such progress; and, there-
11 fore, I was very dissatisfied that the newspapers
12 had not praised the development of Manchoukuo as a
13 bright and peaceful land governed in accordance with
14 the Kingly Way. And it was because of this feeling
15 that I could not bring myself to attend the commem-
16 oration ceremony and to offer my congratulations.

18 THE PRESIDENT: Well, it is now four
19 o'clock. The rate of progress of the individual cases
20 is disappointingly slow. We will adjourn until half-
21 past nine tomorrow morning.

22 (Whereupon, at 1600, an adjourn-
23 ment was taken until Friday, September
24 12, 1947, at 0930.)
25

- - -